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February 21, 2012

BY E.C.F.

Honorable Eric N. Vitaliano
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Darryl Flannagan, Jr. v. City of New York, et al.
11 Civ. 1184 (ENV) (VP)

Your Honor:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants in the above-referenced matter. In furtherance of my letter of January 19, 2012, I write to inform the court that the parties have settled this matter and submit the enclosed proposed Stipulation of Settlement and Order of Discontinuance for the Court's endorsement.

I thank the Court for its time and consideration of this matter.

Respectfully submitted,

s/

Matthew Weir
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Hon. Victor V. Pohorelsky, U.S.M.J. (via E.C.F.)

Edward Friedman, Esq., attorney for plaintiff (by E.C.F.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

DARRYL FLANNAGAN,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
ANDY CRUZ, JOHN DOES 1-2,

Defendants..

**STIPULATION OF
SETTLEMENT AND ORDER OF
DISMISSAL**

11 CV 1184 (ENV) (VVP)

X

WHEREAS, plaintiff commenced this action by filing a complaint on or about March 14, 2011, alleging violations of his federal civil and state common law rights; and

WHEREAS, defendants have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS, plaintiff has authorized his counsel to agree to the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. The City of New York hereby agrees to pay plaintiff Darryl Flannagan the sum of TEN THOUSAND DOLLARS (\$10,000.00) in full satisfaction of all claims, including

claims for costs, expenses and attorneys' fees in this action. In consideration for the payment of this sum, plaintiff agrees to the dismissal of all the claims against defendants The City of New York and Police Officer Andy Cruz, and to release defendants The City of New York and Police Officer Andy Cruz, and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiff shall execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph 2 above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, Plaintiff shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by defendants The City of New York and Police Officer Andy Cruz that they or any present or former employees and agents of the City of New York, or any entity represented by the Office of the Corporation Counsel, in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations

or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. Plaintiff agrees to hold harmless the City of New York regarding any liens or past and/or future Medicare payments, presently known or unknown in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendant City reserves the right to issue a multiparty settlement check, naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: Brooklyn, New York
_____, 2012

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By:


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By:


Matthew Weir
Assistant Corporation Counsel

SO ORDERED:

ERIC N. VITALIANO, U.S.D.J.